In the High Court of Punjab and Haryana, Chandigarh

C.W.P. No. 6642 of 2005

Date of Decision: September 21, 2006

Dr. Raj Kumar Siwach

…Petitioner

Versus

Chaudhary Devi Lal University, Sirsa and another

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr. Inder Pal Goyat, Advocate,
for the petitioner.

Mr. T.S. Dhindsa, Advocate,
for respondent No. 2.

JUDGMENT

M.M. KUMAR, J.

The short question raised in this petition filed under Article 226 of the Constitution is whether respondent No. 2 answers all the required academic qualification for appointment to the post of Reader in the Discipline of Public Administration in the Department of Public Administration, Chaudhari Devi Lal University, Sirsa.

The facts are not in dispute. The respondent University issued an advertisement for direct recruitment for various posts

including the post of Reader in the Discipline of Public Administration. The petitioner being fully eligible and qualified in the field of Public Administration applied for the aforementioned post on the prescribed format. A Selection Committee interviewed the petitioner on 18.7.2004 as per the call letter dated 8.7.2004 (P-3). However, respondent No. 2 was selected as Reader and he joined as such on 4.4.2005. According to the advertisement and application form for all the posts including that of Reader in Public Administration the academic qualification could be ascertained from the University's Website, which in turn referred to the Regulation framed by the University Grants Commission (for short UGC) laying down minimum qualification for appointment and career advancement of teachers in Universities and Colleges. These Regulations are known as the University Grants Commission (minimum qualifications required for the appointment and career advancement of teachers in University and institutions affiliated to it) Regulations, 2000 (for brevity, 'the Regulations'). According to Regulation 2 of the Regulations, the qualification for various posts have been prescribed in the Appendix. With regard to Reader the qualifications are available in para 1.3.2. It requires good academic record with a doctoral degree or equivalent published work. A candidate who has joined from outside the university system is required to possess at least 55% of the marks or an equivalent grade of B in the 7 point scale with latter grades as specified. The further requirement stipulated is five years of experience of teaching and/or

research excluding the period spent for obtaining the research degrees and one should have made mark in the areas of scholarship as evidenced by quality of publications, contribution to educational innovation, design of new course and curricula. The case of the petitioner is that respondent No. 2 did not possess the basic qualification of doctorate in Public Administration. It has been alleged that respondent No. 2 is M.A. Ph.D. in Political Science whereas the petitioner, who is M.A. Ph.D. in Public Administration and fully eligible, has been ignored. It has been asserted in para 7 of the petition that the application of respondent No. 2 for the post of Reader was sent for scrutiny to Kurukshetra University, Kurukshetra, which has marked his application as "not eligible" because he lacked M.A. Ph.D. in Public Administration and on the contrary he possessed M.A. Ph.D. in Political Science. It has been alleged that the Executive Council was never informed about the comments given by the Kurukshetra University, Kurukshetra and it called respondent No. 2 for interview, selected and finally appointed him. The petitioner made a representation through respondent No. 1 against the illegal appointment of respondent No. 2 on 1.4.2005 (P-5). The petitioner has sent a communication to the UGC seeking clarification as to whether a person could be appointed on the post of Reader in Public Administration without possessing M.A. degree in the aforementioned discipline. The reply given by the UGC is that M.A. with 55% marks in the subject concerned i.e. Public Administration is one of the essential requirement for the post of Reader.

In the written statement filed by respondent No. 1 it has been admitted that respondent No. 2 has all his degrees in M.A., M.Phil. and Ph.D. in Political Science and he was selected as Reader in Public Administration. The stand taken is that Public Administration is one of the branches of Political Science, therefore, he was rightly selected by a Selection Committee consisting of eminent experts after evaluating his qualifications. The expression 'relevant subject' is sought to be widely interpreted by respondent No. 1 by asserting that it would include allied and inter-disciplined subjects like Political Science because Political Science is a mother subject. However, the averments made by the petitioner in para 7 declaring respondent No. 2 ineligible by the Scrutiny Committee of the Kurukshetra University, Kurukshetra, have not been controverted. It is, in fact, admitted that Scrutiny Committee has declared respondent No. 2 as ineligible and for that reason in para 8 of the written statement it has been averred that respondent No. 1 was not under obligation to inform the Executive Council about the report of the Scrutiny Committee.

In the written statement filed by respondent No. 2, the broad factual position with regard to his qualification from the discipline of Political Science have been admitted. It has, however, been asserted that he was subjected to a process of selection before an Expert Body comprising of the Vice-Chancellor of the respondent University, who was the Chairman of the Committee, Dr. S.L. Goyal, Professor, Department of Public Administration, Panjab University

(Member UGC Advisory Board) and Dr. R.K. Tiwari, Professor, Indian Institute of Public Administration, New Delhi. It has further been asserted that once the experts are there then his selection and appointment is purely on merit. The Regulations of the UGC are stated to be general in nature and reliance has been placed on a letter dated 5.3.1992 (R-2/1) to show that the subject of Political Science and Public Administration are inter-related and a candidate who possess Master's degree in Political Science is eligible for appointment to the post of Lecturer in either of the two subjects and vice-versa.

We have heard learned counsel for the parties at a considerable length.

Mr. I.P. Goyat, learned counsel for the petitioner has vehemently argued that the petitioner is a meritorious candidate possessing Ph.D. in the discipline of Public Administration as well as Post Graduate degree of M.A. in that subject. He has drawn our attention to the curriculum vitae of the petitioner to show that he has published a book in the year 2004 and his three articles have also been published besides various other articles accepted for publication. According to the learned counsel the petitioner has acquired rich experience of working as a Lecturer for more than 9 years, which include teaching of Post Graduate classes for more than one year at the Department of Public Administration, Kurukshetra University, Kurukshetra and teaching of under Graduate classes at G.N. Khalsa College, Karnal for 8 years. He has pointed out that once the

petitioner is with requisite qualification in the relevant subject of Public Administration is available then there was no reason to consider, select and appoint respondent No. 2, who belongs to the discipline of Political Science. Learned counsel has placed reliance on the Regulations (P-4) and argued that the academic qualification is required to be in respect of the relevant subject and not in an allied subject. He has also placed reliance on the clarification sent by the UGC to the petitioner on 13.4.2005 (P-7) in that regard. He has placed firm reliance on a judgment of Hon'ble the Supreme Court in the case of **Dr. Bhanu Prasad Panda v. Chancellor, Sambalpur University, (2001) 8 SCC 532** and argued that the subjects of Public Administration and Political Science are distinct and separate and a person possessing the academic qualification in the discipline of Political Science could not be appointed to the so called inter-discipline subject of Public Administration. He has drawn our attention to para 5 of the aforementioned judgment. He has also placed reliance on a Division Bench judgment of this Court in the case of **Gursimran Kaur v. State of Punjab, 1997 (1) SCT 706** and argued that for appointment of Lecturer in Religion person with M.A. in History could not be held eligible.

Mr. T.S. Dhindsa, learned counsel for respondent No. 2 has argued that the Court should be extremely slow once the matter has been entrusted to the selection body which is comprised of experts. According to the learned counsel all controversy with regard to qualification and scholarly work done by respondent No. 2 should

not be subject matter of judicial review and scrutiny as the Court is not equipped with any such expertise and it must be presumed that respondent No. 2 answers all the academic qualifications. He has then submitted that the expression 'relevant subject' in UGC Regulations has been used only for the post of Lecturer in para 1.3.3 and no such expression 'relevant subject' has been used in para 1.3.2 which deals with appointment of Reader. On the aforementioned basis, learned counsel has sought to distinguish the judgment of Hon'ble the Supreme Court in Dr. Bhanu Prasad Panda's case (supra) by arguing that there the post of Lecturer was in question and the expression 'relevant subject' was construed to mean strictly the area concerned.

Having heard the learned counsel for the parties, we are of the considered view that this petition deserves to be allowed as there is considerable merit in the contention raised by the learned counsel for the petitioner. It is admitted position that the appointment of teaching staff at the respondent University is governed by the 'Regulations' (P-4). The aforementioned 'Regulations' have been framed by the UGC in pursuance to the powers conferred by clause (e) and (g) of sub-Section (1) of Section 26 read with Section 14 of the University Grants Commission Act, 1956. According to Regulation 2, qualifications have been prescribed for the appropriate subject as per the Annexure. Regulation 2 along with para 1.3.2 and 1.3.3 of the Appendix reads as under:-

"**2. Qualifications:**

No persons shall be appointed to a teaching post in university or in any of institutions including constituent or affiliated colleges recognized under clause (f) of section 2 of the University Grants Commission Act, 1956 or in an institution deemed to be a university under section 3 of the said Act in a subject if he/she does not fulfil the requirements as to the qualifications for the appropriate subjects as provided in the Annexure.

Provided that any relaxation in the prescribed qualifications can only be made by the University Grants Commission in a particular subject in which NET is not being conducted or enough number of candidates are not available with NET qualifications for a specified period only. (This relaxation, if allowed, would be given based on sound justification and would apply to affected Universities for that particular subject for the specified period. No individual applications would be entertained).

Provided further that these regulations shall not be applicable to such cases where selections of

the candidates having had the then requisite minimum qualification as were existing at that time through duly constituted Selection Committee for making appointments to the teaching posts have been made prior to the enforcement of these regulations."

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"**1.3.2 Reader**

Good academic record with a doctoral degree or equivalent published work. In addition to these, candidates when join from outside the university system, shall also possess at least 55% of the marks or an equivalent grade of B in the 7 point scale with latter grades, O, A, B, C, D, E, and F at the Master's degree level.

Five years of experience of teaching and/or research excluding the period spent for obtaining the research degrees and has made one mark in the areas of scholarship as evidenced by quality of publications, contribution to educational innovation, design of new courses and curricula.

1.3.3. Lecturer.

> Good academic record with at least 55% of the marks or, an equivalent grade of B in the 7 point scale with latter grades, O, A, B, C, D, E, and F at the Master's degree level, in the relevant subject from an Indian University, or an equivalent degree from a foreign university.
>
> Besides fulfilling the above qualifications, candidates should have cleared the eligibility test (NET) for lecturers conducted by the UGC, CSIR, or similar test accredited by the UGC.
>
> Note:- Net shall remain the compulsory requirement for appointment as Lecturer even for candidates having Ph.D. degree. However, the candidate who have completed M.Phill. degree or have submitted P.D. thesis in the concerned subject up to 31st December, 1993 are exempted from appearing in the NET examination."

A perusal of Regulation 2 would show that it contains a prohibition exhorting that no person is to be appointed to a teaching post in the University or affiliated colleges or in an institution deemed to be an University under the University Grants Commission Act, 1956 if he or she did not fulfil the requirement as to the qualification for the *'appropriate subjects'* as provided in the Annexure. There are two proviso appended to Regulation 2, which talks of relaxation of prescribed qualification only in two

eventualities - (A) if the UGC has not been able to conduct the NET Examination in a particular subject or (B) enough number of candidates are not available with such qualification for a specified period. The other proviso emphasis the non-application of Regulation 2 along with the Annexure to those who have already been selected and appointed through a duly constituted Selection Committee to a teaching post prior to enforcement of the Regulations. According to para 1.3.2 of the Annexure, for appointment to the post of Reader a good academic record with a doctoral degree or equivalent published work is required and those who have joined from outside the university system are required to possess at least 55% of marks or an equivalent grade of B in the 7 point scale. Five years experience of teaching and/or research is also stipulated. But it is to exclude the period spent for obtaining the research degrees. It further requires that a candidate should have made a mark in the areas of scholarship which should be evidenced by quality of publications, contribution to educational innovation, design of new courses and curricula. The language of Regulation 2 clearly postulates that no person is to be appointed to a teaching post in the university which would include the post of Reader unless he/she fulfils the requirement as to qualification for the appropriate subject as provided in the Annexure. In other words, para 1.3.2 of the Annexure cannot be read in isolation. Accordingly, it has to necessarily mean that any person who seeks appointment to a post under the Regulations (which would include the post of Reader) have to fulfil the requirements concerning

qualification in the appropriate subject as per the Annexure. The controversy, if any, has been completely removed by para 1.3.3, which deals with appointment to the post of Lecturer. Admittedly, the expression 'relevant subject' has been used which would mean in the present case that for the post of Lecturer a person with a degree of M.A. in Public Administration along with eligibility test for Lecturer like NET etc., would alone be eligible to be considered. Even the UGC in reply to the letter written by the petitioner has stated that Post Graduation has to be in the subject concerned i.e. Public Administration with 55% marks as one of the essential requirement (P-7).

The case of the petitioner is amply supported by the view expressed by Hon'ble the Supreme Court in Dr. Bhanu Prasad Panda's case (supra). Para 5 of the judgment on which reliance has been placed by the learned counsel for the petitioner places the whole controversy beyond any entertainable doubt by stating that the discipline of Public Administration and Political Science are distinct and separate. Therefore, a person who is qualified in one discipline could not be appointed on the post of Lecturer in another discipline. The aforementioned distinction is not dependent on the use of expression 'relevant subject' in para 1.3.3 of the Annexure attached with Regulation because Regulation 2 itself uses the expression 'appropriate subjects'. The aforementioned para makes an interesting reading, which is as under:-

" 5. We have carefully considered the submissions of the learned counsel appearing on either side. The stipulation regarding the minimum academic qualification reads, "good academic record with at least 55 per cent marks or an equivalent grade of Master's degree level in the *relevant subject* from an Indian university or an equivalent degree from a foreign university". Though the Department concerned for which the appointment is to be made is that of "Political Science and Public Administration", the appointment with which we are concerned, is of Lecturer in Political Science and not Public Administration and subject-matterwise they are different and not one and the same. It is not in controversy that the posts of Lecturers in Public Administration and in Political Science are distinct and separate and on selection the appellant could not have been appointed as Lecturer in Public Administration, be it in the Department of Political Science and Public Administration since the advertisement was specifically to fill up the vacancy in the post of Lecturer in Political Science. Merely because the Department is of Political Science and Public Administration – the essential requirement of academic qualification of a particular standard and grade viz. 55%, in the "relevant subject" for which the post is advertised,

> cannot be rendered redundant or violated by ignoring the relevant subject and carried away by the name of the Department only which, in substance, encompasses two different disciplines. That merely depending upon the context he was being referred to or the post is referred to as being available in the Department of Political Science and Public Administration, is no justification to do away or dispense with the essential academic qualification in the relevant subject for which the post has been advertised. Consequently, Resolution No. 6.2 dated 18.2.1992 or extracts provided from the proceedings of the Board of Studies dated 2.3.1996 cannot be of any assistance to support the claim of the appellant. The rejection by UGC of the request of the Department in this case to relax the condition relating to 55% marks at postgraduation level for Research Assistant having MPhil up to March 1991 or PhD up to December 1992, is to be the last word on the claim of the appellant and there could be no further controversy raised in this regard. In view of the above, no exception could be taken to the decision of the Chancellor and no challenge could be countenanced in this appeal against the well-merited decision of the High Court." (emphasis supplied)

The Division Bench of this Court also has taken similar view in the case of Gursimran Kaur (supra). Therefore, we have no

hesitation to conclude that respondent No. 2 was not eligible to be considered for appointment to the post Reader in Public Administration as he had all the qualification in the area of Political Science.

The argument of the learned counsel for respondent No. 2 that the Court should not interfere in the area concerning academic world does not require any detailed consideration because it is now well settled that the matter relating to appointments, promotions, seniority and other service conditions are within the judicial review of this Court in the context of doctrine of equality as enshrined in Articles 14 and 16 of the Constitution. Therefore, the recommendation made by selection body cannot remain immune from judicial review merely because the appointment is to be made in the university or a college or such like institution. We cannot refrain from holding respondent No. 1 to the standard and norms laid down by the UGC by statutory Regulations which are binding on it and the Selection Committees. The Division Bench in the case of Gursimran Kaur (supra) also rejected a similar argument by placing reliance on a judgment of Hon'ble the Supreme court in the case of **Dr. J.P. Kulshrestha v. Chancellor, Allahabad University, AIR 1980 SC 2141**. The aforementioned para read as under:-

> " Rulings of this Court were cited before us to hammer home the point that the Court should not substitute its judgment for that of academicians when the dispute relates to educational affairs. While there is no

absolute ban, it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies. But University organs, or for that matter any authority in our system, is bound by the rule of law and cannot be a law upto itself. If the Chancellor or any other authority lesser in level decides an academic mater or an educational question, the Court keeps its hands off; but where as provision of law has to be read and understood, it is not fair to keep the Court out. In Govinda Rao's case, (1964) 4 SCR 575 at p. 586 : (AIR 1965 SC 491) Gajendragadkar, J. (as he then was struck the right note:

> " What the High Court should have considered is whether the appointment made by the Chancellor had contravened any statutory or binding rule or ordinance and in doing so, the High Court should have show due regard to the opinions expressed by the Board and the recommendations on which the Chancellor has acted." (Emphasis added).

The later decisions cited before us proudly conform to the rule of caution sounded in Govinda Rao. But to respect an authority is not to worship it unquestioningly since the bhakti cult is in-ept in the critical field of law. In short, while dealing with legal affairs which have an impact on academic bodies, the

views of educational experts are entitled to great consideration but not to exclusive wisdom. Moreover, the present case is so simple that profound doctrines about academic autonomy have no place here." (emphasis supplied)

The principle that the educational institutions and universities are not immune from the judicial review becomes more explicit from the later judgment of Hon'ble the Supreme Court in the case of **K. Shekar v. V. Indiramma, (2002) 3 SCC 586**. In para 21 it has been observed as under:-

" 21. We can take judicial notice of the fact that NIMHANS is an institution of repute. It has already been so recognised by this Court in B.R. Kappor v. Union of India, (1989) 3 SCC 387. It is also true that generally speaking courts have been reluctant to interfere with the running of educational institutions. But there can be "no islands of insubordination to the rule of law". The actions of educational institutions, however highly reputed, are not immune from judicial scrutiny. Indeed, to preserve the high reputation, there is a greater need to avoid even the semblance of arbitrariness or extraneous considerations colouring the institution's actions."

The argument of the learned counsel for the respondents is required to be examined in the light of the principle laid down by Hon'ble the Supreme Court in the above mentioned cases. We find

that there is no substance in the arguments raised by the learned counsel for the respondents. We are further of the view that declaring respondent No. 2 as eligible defies ignorance as the basic fundamentals have been completely ignored. The law in this area appears to be well settled as is evident from perusal of the judgment of Hon'ble the Supreme Court in Dr. Bhanu Prasad Panda's case (supra). It is not fair for the university like respondent No. 1 to disturb the concentration of academicians, like the petitioner, to compel them to indulge in avoidable litigation. The University should have followed and applied the minimum norms prescribed by the UGC. We hope and trust that there is no recurrence of any such lapse in future and congenial atmosphere is created in the University for scholastic studies with apt attention leaving academicians alone from the legal controversies.

For the reasons aforementioned, we declare that respondent No. 2 is ineligible for the post of Reader in Public Administration. His selection and appointment as Reader in Public Administration is declared illegal and is hereby quashed. Respondent No. 1 shall be free to re-advertise the post and fill the same in accordance with law which should be done at the earliest in order to avoid any loss to the students. The petitioner is held entitled to costs of Rs. 10,000/- which shall be recoverable from respondent No. 1.

(M.M. KUMAR)
JUDGE

(M.M.S. BEDI)
JUDGE

September 21, 2006

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